



CITY OF NEWTON, MASSACHUSETTS

Department of Planning and Development

Michael J. Kruse, Director

Telephone

(617)-796-1120

Telefax

(617) 796-1142

TDD/TTY

(617) 796-1089

David B. Cohen
Mayor

Public Hearing Date: **June 12, 2006**

Zoning and Planning Action Date: June 26, 2006

Board of Aldermen Action Date: **July 10, 2006**

90-Day Expiration Date: Sept. 10, 2006

TO: Board of Aldermen
Planning and Development Board

FROM: Michael Kruse, Director of Planning and Development
Juris G. Alksnis, Chief Zoning Code Official

SUBJECT: PETITION #102-06 of KESSELER DEVELOPMENT, LLC, Proposing to amend Section 30-15, Table 1, *Density & Dimensional Controls in Residential Districts and for Residential Uses*, by inserting in Table 1 a new Footnote (9) providing for a higher multi residence structure in the MR3 zone up to 4 stories and 48 ft. in height, subject to special permit and certain conditions pertaining to minimum site area, building placement, and setbacks.

CC: Mayor David B. Cohen
Philip B. Herr, Chair, Comprehensive Planning Advisory Committee

RECOMMENDATION: *Approve proposal with 3-acre minimum site and 50 ft. setbacks.*

The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Boards. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider during its discussion at a subsequent Working Session.

I. BACKGROUND

The subject petition is associated with a proposal, which is part of an overall plan to develop a portion of the former Boston Edison land, also known as Kessler Woods. The City of Newton and the petitioner, Cornerstone Corporation, agreed to work together per the Cooperative Bidding Agreement Regarding Kessler Woods Property, and following a complex bidding process held by Boston Edison, became owners of various portions of the Kessler Woods property. At this time, the petitioner proposes one large multi-family dwelling structure with several townhouse structures (containing attached dwelling units) situated nearby around a ring road.

In order to implement this development, several key actions are needed as follows:

- ***Amendment of the Newton Zoning Ordinance, Section 30-15, Table 1 to allow by special permit multi-family dwelling structures up to 4 stories and 48 ft. (current limit: 3 stories and 36 ft.) in the Multi-Residence 3 zone (MR-3).***
- ***Rezoning of parcel H-1 from Single Residence 3 (SR-3) to MR-3***
- ***Special permit and site plan approval for multi-family dwelling and attached dwelling unit development and related zoning relief to the extent necessary.***

The petitioner filed concurrent petitions addressing each of the above, which were initially heard on March 14, 2006. Deliberations on all three petitions #102-06, #102-06(2) and #102-06(3) are ongoing at this time by the Zoning and Planning Committee (#102-06) and Land Use Committee (#102-06(2) & #102-06(3)) of the Board of Aldermen. At its April 3, 2006 meeting, the Planning and Development Board voted to approve the text amendment with modifications recommended by the Planning Department as described in the Department's memorandum prepared for the March 14, 2006 hearing. However, as the 90-day time period for action on #102-06 expires on June 12, 2006, it became necessary to rehear this item. This memorandum provides an updated analysis regarding petition #102-06 pertaining to the proposed Zoning Ordinance text amendment as most recently restated and advertised for rehearing. Also see the Planning and Development Department memorandum reviewing petitions #102-06(2) – proposed rezoning from SR-3 to MR-3, and #102-06(3) – requesting special permit and site plan approval.

II. EXISTING ORDINANCE AND PROPOSED AMENDMENT

At the present time, the City's Zoning Ordinance does not allow multi-family dwellings exceeding 3 stories and 36 ft. in height in Multi-Residence zones. The language submitted under the restated petition proposes to add a new Footnote 9 applicable solely to multi-family dwellings in the MR-3 zone only as follows (changes shown in *bold*):

(9) allowed by special permit in a Multi-Residence 3 District a multi-family dwelling structure to have a maximum building height of 48 feet and a maximum number of stories of 4, provided that there is a minimum lot size of 10 acres, the distance from the street to such multi-family dwelling structure is no less than 150 feet and the distance between such structure and abutting properties is no less than 75 feet; and the front, side and rear setbacks for the lot are 50 feet from the lot line.

Or

(9) allowed by special permit in a Multi-Residence 3 District a multi-family dwelling structure to have a maximum building height of 48 feet and a maximum number of stories of 4, provided that there is a minimum lot size of 3 acres, the distance from the street to such multi-family dwelling structure is no less than 150 feet and the distance between such structure and abutting properties is no less than 75 feet; and the front, side and rear setbacks for the lot are 50 feet from the lot line.

Both of the above versions have been duly advertised and may be considered at the discretion of the Board of Aldermen. The purpose of the proposed footnote is allow multi-family dwellings up to 4 stories and 48 ft. in height solely in the MR-3 zone on sites having a minimum site either of 3 or 10 acres (to be determined by the Board), subject to special permit, provided certain building placement conditions (buffering distances) are met, and provided certain setback requirements are satisfied.

DI. ANALYSIS.

General

The City's Zoning Ordinance, Section 30-1, Definitions, describes a multi-family dwelling as follows:

Dwelling, multi family --A building or structure containing three (3) or more dwelling units.

Multi-family dwellings as a use (previously also known as "More than two dwelling units on a lot") have been available since adoption of the City's first Zoning Ordinance in 1922. When in 1987 the City updated the Zoning Ordinance and renamed the then existing Private Residence, and Residence D-F multi-family zones to MR-1– MR-4 zones, multi-family dwellings could be developed pursuant to special permit in MR-2 zones with 3 stories up to 36 ft. in height and in MR-3 zones with 6 stories up to 60 ft. in height. In subsequent years, the Board of Aldermen intentionally reduced building stories and height in both Single- and Multi-Residence zones. On April 23, 1997, the Board adopted Ordinance #V-111 reducing the height limit in MR-2 zones from 36 to 30 while retaining 3 stories. A few years later on June 19, 2000, the Board of Aldermen adopted Ordinance #V-307 reducing stories from 6 to 3, and height from 60ft. to 36 in MR-3 zones. However, multi-family use in conjunction with on-site ancillary services continues to be available in the MR-4 zone category where stories and height are not regulated under Table 1, yet are subject to review and approval pursuant to the special permit process. Nevertheless it is also noted that there do not appear to be any locations zoned MR-4 within the City today.

At the present time, the City's Zoning Ordinance allows multi-family dwellings subject to special permit in MR2-4, BU1-4, and MU 1-2 zones. In addition, multi-family dwellings are allowed as of right in BU1 - 4 and MU2 zones on lots meeting certain threshold frontage, lot area, and lot area/dwelling unit requirements when located above commercial uses occupying the first floor, and where buildings do not exceed specified height, gross floor area, and FAR limits. Minimum frontage, lot area, and lot area per unit requirements are established for all multi-family dwellings in Section 30-15, Table 1, *Density & Dimensional Controls in Residence Districts and for Residential Uses* (Table 1) along with other applicable controls for residential zones. For multi-family dwellings in commercial and mixed use zones, the respective complementary applicable controls are set out in Section 30-15, Table 3, *Dimensional Requirements for Commercial Districts* (Table 3).

Proposed changes to MR-3 in Section 30-15, Table 1

The following table compares the proposed height, story, and setback provisions of the restated petition with applicable existing requirements pertaining to multi-family dwellings where allowed in MR zones. No change is proposed to the maximum building lot coverage (45%) or minimum open space (30%) required in the MR-3 zone, nor to any limitations established in commercial or mixed use zones.

Zone	Comparison of Existing MR Requirements and Proposed New Provisions						
	Spec. Perm	Lot area: Lot Area/du	Fron- tage	Max. Height and Stories	FAR	Minimum Setbacks	Building Placement
MR-2	Yes	10,000 sq. ft. 3,000 sq. ft./du	80 ft.	30 ft. 3 stories	Unreg.	F: 25 ft. S: 7.5 ft. R: 15 ft.	None
MR-3	Yes	10,000 sq. ft. 1,200 sq. ft./du	80 ft.	36 ft 3 stories	Unreg.	F: 15 ft. S: 1/3 ht. R: 1/2 ht.	None
MR-3 Prop Fn (9)	Yes	10 acres 1,200 sq. ft./du	80 ft.	48 ft 4 stories	Unreg.	F: 50 ft. S: 50 ft. R: 50 ft.	From street: 150 ft. From abutting lots: 75 ft.
<i>or</i>							
MR-3 Prop Fn (9)	Yes	3 acres 1,200 sq. ft./du	80 ft.	48 ft. 4 stories	Unreg.	F: 50 ft. S: 50 ft. R: 50 ft.	From street: 150 ft. From abutting lots: 75 ft.
MR-4	Yes	3 acres 1,000 sq. ft./du	Unreg.	Height: unreg. 3 stories	Unreg.	F: 50 ft. S: 50 ft. R: 50 ft.	Separation on same site: 2x ht.; min. 50 ft.

Note: proposed changes are indicated in **bold** above.

Multi-family dwellings having a maximum height of three stories and 36 may currently be built in the MR-3 zone, subject to grant of a special permit by the Board of Aldermen. In addition, Section 30-15(h) provides that the Board of Aldermen may grant a special permit in MR-3 for the construction of residential buildings "*.. in excess of the number of stories and height permitted as of right..*" up to such height and stories available subject to special permit as enumerated in Table 1. However, at present there is no option to build multi-family dwellings "as of right" in this zone. As FAR is not stated, intensity of development on any particular site is governed by the applicable maximum building lot coverage limits and minimum open space requirements, in conjunction with the special permit site plan review process.

The proposed change will make possible, subject to special permit, -- an increase in building size by one story (up to 4 stories), and by 12 (up to 48 ft. in height), subject to a minimum site area requirement as discussed below. Building placement must be at least 150 ft. from a street and no closer to an abutting lot line than 75 ft. In addition, front, side, and rear setbacks have been increased to 50 in the restated petition, whereas the initial petition maintained existing Table 1 setbacks as enumerated for the MR-3 zone. While the proposed text would enable the construction of additional building height, volume, dwelling units, and floor area, the petitioner seeks to moderate potential impacts generated by increased

development intensity through instituting building placement distances to buffer abutting properties. In addition, the increased setbacks as now proposed will preclude construction of primary and accessory structures (including amenities qualifying as structures) as well as parking facilities within a 50 ft. setback area along all lot lines.

As noted in the Planning Department's March 14, 2006 memorandum regarding this petition, the initially proposed 10-acre minimum site requirement exceeds by a factor of 43 times the existing minimum lot area requirement of 10,000 sq. ft. Also, when compared with "cluster development" provisions found in Section 30-15(k) *Open Space Preservation Development*, minimum site area is 5 acres, which is required in Single Residence (SR) as well as Multi Residence (MR) zones for projects seeking to concentrate development so as to facilitate preservation of open space. Moreover, although well intentioned, the proposed 10-acre site area alternative appears excessive when compared with existing requirements in MR zones (see the above table). For example, in the MR-4 zone, it is currently possible to have a multi-family dwelling with certain amenities, such as accessory dining rooms and convenience business services including barbershops, newsstands, drugstores, food stores, and the like, subject to special permit and subject to certain gross floor area limitations, provided the lot has a minimum area of 3 acres and setbacks of 50 ft. all around along with a minimum building separation requirement of 50 ft. (for buildings on the same lot). While the accessory uses are similar to commercial uses more typically found in business zones, they are included and allowed in the MR-4 zone within certain gross floor area limits, so as to serve the internal needs of the residential community located within a multi-family building or complex.

The Planning Department in its prior memorandum suggested a straightforward approach requiring a minimum 3-acre site area together with 50 setbacks. Such an approach would maintain consistency with the current system of dimensional controls while moderating any incremental increase in intensity of use as may be occasioned by a larger building (4 stories; 48 ft.), and would be simple to understand.

The restated petition includes both the additional buffering requirements along with the proposed increased setbacks. As a result, the proposed 150 ft. building placement distance from the street is 3 times the proposed front setback of 50ft. and the 75 ft. abutting property line placement distance is 1.5 times the proposed side and rear yard setbacks, also 50. Compared with standard setbacks otherwise applicable in the MR-3 zone, the buffering provision superimposes a site building placement requirement which ranges from 4 to 10 times the normally applicable front (15 ft.), side (12 max.), and rear (18 ft. max.) setbacks in this zone. The Planning Department believes this is overly complicated and restrictive, particularly as the significantly larger setbacks of 50 ft. are already part of the restated proposal. Moreover, it is noted that no special site building placement/buffering requirements are required elsewhere within the current requirements for MR zones.

Future development implications

Based on information indicated on the map *Properties Zoned Multi-Residence 3*, dated April 7, 2006, provided by the City's Geographic Information System (GIS), MR-3 parcels are distributed within the City by size as follows:

Properties Zoned Multi-Residence 3		
Parcel size	No. Parcels	Notes
Under 3 acres	68-70	Developed
3 – 5 acres	5	Developed
5 – 10 acres	1	Developed
Over 10 acres	2	Developed

At present, there are no vacant parcels already zoned MR-3 that would be affected by the proposed amendment. However, should the Board of Aldermen approve petition #102-06(2) to rezone the Kessler Woods parcel from SR-3 to MR-3, the subject property would fall in the over 10 acre category.

The City of Newton Recreation and Open Space Plan, 2003-07 indicates in its Open Space Inventory that relatively few privately owned properties remain in Newton, which have an area of 10 or more acres other than Kessler Woods. Six parcels are owned by religious and educational institutions, and another four are held by various other entities. The three largest parcels, each exceeding 10 acres and together totaling approximately 545.6 acres are held by three country clubs. All of the properties are affected by wetland regulations to some extent; many have wetlands and/or conservation restrictions of various types, while institution-owned properties typically contain campuses with existing buildings. When considering privately held parcels having 5 – 10 acres with hypothetically available developable area, only six additional properties are found in the subject Inventory. Of these, three have wetlands and/or conservation restrictions, one has a historic preservation restriction, another has extensive rock formations, and yet another has a pond. In the range of 3-5 acres, only six more privately held parcels are identified in the Inventory. Of these, one is surrounded by City-owned recreation and conservation lands, two are subject to riverine and/or wetlands regulations, two contain educational institutions, and another parcel is largely developed with the facilities of a long –standing community non-profit social service organization. As a result, it is unlikely that either a 3-acre or a 5-acre minimum lot area would add many parcels to the mix of potentially developable land for rezoning to MR-3. However, a 3-acre or a 5-acre minimum would increase the hypothetical number of parcels, which may be subdivided from large currently undeveloped parcels. Nevertheless, it is also noted that no automatic "as of right" multi-family development is available under Newton's Zoning Ordinance -- all development of multi-family residential buildings requires site plan review and is subject to the special permit process.

Of the above-mentioned possibilities, it is generally acknowledged that the current single-family zoned country club properties contain significant potential for development and may generate interest for rezoning to higher density residential use at some future time. In such case, it is likely developers will consider one or more development options currently available under existing MR zone provisions along with any increase in development opportunity which may become available should the most recent version of petition #102-06 or a modified proposal be adopted by the Board. Nonetheless, as already noted above, any such proposal would be subject not only to the public process associated with rezoning petitions but would also require site plan approval and a special permit, all of which would provide ample opportunity for close scrutiny and review prior to approval *as* well as disapproval by the Board.

Format.

It is generally recognized that Newton's Zoning Ordinance is confusing and hard to follow, in part due to various amendments over time. In the case of the proposed text amendment, the intent is to adopt in footnote form a set of dimensional controls not currently enumerated within Table 1. The Planning Department suggests the Board consider placing this information within the body of Table 1 consistent with existing format. This should help users better navigate the Zoning Ordinance and facilitate better understanding the applicable requirements.

IV. SUMMARY AND RECOMMENDATIONS

The intent of the restated Footnote (9) as proposed for Table 1 is to make possible the development of multi-family dwellings up to 4 stories and 48 in height in the MR-3 zone, subject to special permit, significantly increased minimum lot area, and extensive new building placement requirements (150 ft. and 75 ft.), and 50 ft. setbacks, as discussed above. Originally proposed with a 10-acre minimum site area, the restated proposal also contains the alternative option of a 3-acre minimum site area. While the petition is offered in conjunction with the Kessler Woods project, the proposed text amendment will affect all MR-3 zoned areas in Newton. The proposed change will have the effect of increasing available building size in currently MR-3 zoned areas and by extension, also in lower density residentially zoned areas of sufficient size, which might be perceived as candidates for rezoning to MR-3.

The 10 acre minimum site area approach together with the addition of significant building placement buffering requirements and increased setbacks all around are intended to lessen impacts of such correspondingly larger, more intensive multi-family dwellings as would be possible under the proposed Footnote (9). These requirements will serve to limit development of 4 story/48 ft. multi-family residential buildings to those sites with capacity to satisfy these more stringent requirements. However, it is also noted that these much more restrictive requirements appear out of scale with existing MR lot area and dimensional controls. Any increase in height and stories would also be subject to special permit and site plan review, which enables the Board of Aldermen to undertake detailed scrutiny of proposed plans and require such mitigation requirements as the Board, deems appropriate. In comparison, existing provisions for minimum lot area and setbacks in the more intensive MR-4 zone for multi-family dwellings having on-site accessory dining and commercial uses, require a minimum site area of 3 acres and 50 ft. setbacks all around. The Planning Department continues to believe that a simpler solution requiring a minimum 3 acre site area together with 50 setbacks would maintain consistency with the current system of dimensional controls while also moderating any incremental increase in intensity of use as may be occasioned by the larger building (4 stories; 48 ft.). As no automatic "as of right" multi-family development is available under Newton's Zoning Ordinance -- all development of multi-family residential buildings requires site plan review and is subject to the special permit process.

The Planning and Development Department recommends that the Board of Aldermen:

- 1. Adopt the proposed restated Footnote (9) version having a minimum site area of 3 acres and 50 ft. setbacks all around, but without the building placement provisions (150 ft. and 75 ft.); and***
- 2. Make such new provisions as are adopted easier to navigate by placing dimensional controls within the body and format of Table 1 rather than in footnote form.***